
By: **Senators Pinsky, Britt, Frosh, Green, Grosfeld, Hollinger, Kelley, and Middleton**

Introduced and read first time: January 31, 2003

Assigned to: Budget and Taxation

A BILL ENTITLED

1 AN ACT concerning

2 **Corporate Income Tax Reform**

3 FOR the purpose of authorizing the Comptroller to distribute, apportion, or allocate
4 certain tax attributes between and among two or more organizations, trades, or
5 businesses under certain circumstances; requiring that certain interest
6 expenses and certain intangible expenses be added to the federal taxable income
7 of a corporation to determine Maryland modified income under certain
8 circumstances; requiring certain corporations to compute Maryland taxable
9 income using a certain method for certain taxable years; requiring certain
10 corporations under certain circumstances to include with an income tax return
11 or otherwise file with the Comptroller a certain statement regarding certain
12 dealings and transactions with related corporations; providing that except as
13 provided by and subject to regulations of the Comptroller, certain groups of
14 corporations shall file a combined income tax return reflecting the aggregate
15 income tax liability of all of the members of the group for certain taxable years;
16 requiring the Comptroller to adopt certain regulations; defining certain terms;
17 providing for the application of this Act; and generally relating to the income tax
18 on corporations.

19 BY adding to
20 Article - Tax - General
21 Section 10-109, 10-306.1, and 10-402.1
22 Annotated Code of Maryland
23 (1997 Replacement Volume and 2002 Supplement)

24 BY repealing and reenacting, with amendments,
25 Article - Tax - General
26 Section 10-804(e)(3) and 10-811
27 Annotated Code of Maryland
28 (1997 Replacement Volume and 2002 Supplement)

29 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
30 MARYLAND, That the Laws of Maryland read as follows:

1 **Article - Tax - General**

2 10-109.

3 (A) THE COMPTROLLER MAY DISTRIBUTE, APPORTION, OR ALLOCATE GROSS
4 INCOME, DEDUCTIONS, CREDITS, OR ALLOWANCES BETWEEN AND AMONG TWO OR
5 MORE ORGANIZATIONS, TRADES, OR BUSINESSES, WHETHER OR NOT
6 INCORPORATED, WHETHER OR NOT ORGANIZED IN THE UNITED STATES, AND
7 WHETHER OR NOT AFFILIATED, IF:

8 (1) THE ORGANIZATIONS, TRADES, OR BUSINESSES ARE OWNED OR
9 CONTROLLED DIRECTLY OR INDIRECTLY BY THE SAME INTERESTS; AND

10 (2) THE COMPTROLLER DETERMINES THAT THE DISTRIBUTION,
11 APPORTIONMENT, OR ALLOCATION IS NECESSARY IN ORDER TO PREVENT THE
12 EVASION OF TAXES OR TO CLEARLY REFLECT THE INCOME OF ANY SUCH
13 ORGANIZATIONS, TRADES, OR BUSINESSES.

14 (B) THE COMPTROLLER SHALL ADOPT REGULATIONS THAT ARE NECESSARY
15 OR APPROPRIATE TO CARRY OUT THIS SECTION.

16 10-306.1.

17 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
18 INDICATED.

19 (2) "INTANGIBLE EXPENSE" MEANS:

20 (I) AN EXPENSE, LOSS, OR COST FOR, RELATED TO, OR IN
21 CONNECTION DIRECTLY OR INDIRECTLY WITH, THE DIRECT OR INDIRECT
22 ACQUISITION, USE, MAINTENANCE, MANAGEMENT, OWNERSHIP, SALE, EXCHANGE,
23 OR ANY OTHER DISPOSITION OF INTANGIBLE PROPERTY, TO THE EXTENT THE
24 EXPENSE, LOSS, OR COST IS ALLOWED AS A DEDUCTION OR COST IN DETERMINING
25 TAXABLE INCOME FOR THE TAXABLE YEAR UNDER THE INTERNAL REVENUE CODE;

26 (II) A LOSS RELATED TO OR INCURRED IN CONNECTION DIRECTLY
27 OR INDIRECTLY WITH FACTORING TRANSACTIONS OR DISCOUNTING TRANSACTIONS;

28 (III) A ROYALTY, PATENT, TECHNICAL, AND COPYRIGHT FEE;

29 (IV) A LICENSING FEE; AND

30 (V) ANY OTHER SIMILAR EXPENSE OR COST.

31 (3) "INTANGIBLE PROPERTY" MEANS PATENTS, PATENT APPLICATIONS,
32 TRADE NAMES, TRADEMARKS, SERVICE MARKS, COPYRIGHTS, AND SIMILAR TYPES
33 OF INTANGIBLE ASSETS.

34 (4) "INTEREST EXPENSE" MEANS AN AMOUNT DIRECTLY OR INDIRECTLY
35 ALLOWED AS A DEDUCTION UNDER § 163 OF THE INTERNAL REVENUE CODE FOR

1 PURPOSES OF DETERMINING TAXABLE INCOME UNDER THE INTERNAL REVENUE
2 CODE.

3 (5) "RELATED MEMBER" MEANS A PERSON THAT, WITH RESPECT TO THE
4 TAXPAYER DURING ALL OR ANY PORTION OF THE TAXABLE YEAR, IS:

5 (I) A RELATED ENTITY;

6 (II) A COMPONENT MEMBER, AS DEFINED IN § 1563(B) OF THE
7 INTERNAL REVENUE CODE; OR

8 (III) A PERSON TO OR FROM WHOM THERE IS ATTRIBUTION OF
9 STOCK OWNERSHIP IN ACCORDANCE WITH § 1563(E) OF THE INTERNAL REVENUE
10 CODE.

11 (6) "RELATED ENTITY" MEANS A PERSON THAT, APPLYING THE
12 ATTRIBUTION RULES OF § 318 OF THE INTERNAL REVENUE CODE, IS:

13 (I) A STOCKHOLDER WHO IS AN INDIVIDUAL, OR A MEMBER OF
14 THE STOCKHOLDER'S FAMILY ENUMERATED IN § 318 OF THE INTERNAL REVENUE
15 CODE, IF THE STOCKHOLDER AND THE MEMBERS OF THE STOCKHOLDER'S FAMILY
16 OWN, DIRECTLY, INDIRECTLY, BENEFICIALLY, OR CONSTRUCTIVELY, IN THE
17 AGGREGATE, AT LEAST 50% OF THE VALUE OF THE TAXPAYER'S OUTSTANDING
18 STOCK;

19 (II) A STOCKHOLDER, OR A STOCKHOLDER'S PARTNERSHIP,
20 LIMITED LIABILITY COMPANY, ESTATE, TRUST, OR CORPORATION, IF THE
21 STOCKHOLDER AND THE STOCKHOLDER'S PARTNERSHIPS, LIMITED LIABILITY
22 COMPANIES, ESTATES, TRUSTS, AND CORPORATIONS OWN DIRECTLY, INDIRECTLY,
23 BENEFICIALLY, OR CONSTRUCTIVELY, IN THE AGGREGATE, AT LEAST 50% OF THE
24 VALUE OF THE TAXPAYER'S OUTSTANDING STOCK; OR

25 (III) A CORPORATION, OR A PARTY RELATED TO THE CORPORATION
26 IN A MANNER THAT WOULD REQUIRE AN ATTRIBUTION OF STOCK FROM THE
27 CORPORATION TO THE PARTY OR FROM THE PARTY TO THE CORPORATION UNDER
28 THE ATTRIBUTION RULES OF § 318 OF THE INTERNAL REVENUE CODE, IF THE
29 TAXPAYER OWNS, DIRECTLY, INDIRECTLY, BENEFICIALLY, OR CONSTRUCTIVELY, AT
30 LEAST 50% OF THE VALUE OF THE CORPORATION'S OUTSTANDING STOCK.

31 (B) (1) IN ADDITION TO THE MODIFICATIONS UNDER §§ 10-305 AND 10-306
32 OF THIS SUBTITLE, EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, THE
33 AMOUNTS UNDER PARAGRAPH (2) OF THIS SUBSECTION ARE ADDED TO THE
34 FEDERAL TAXABLE INCOME OF A CORPORATION TO DETERMINE MARYLAND
35 MODIFIED INCOME.

36 (2) THE ADDITION UNDER THIS SUBSECTION INCLUDES ANY
37 OTHERWISE DEDUCTIBLE INTEREST EXPENSE OR INTANGIBLE EXPENSE, IF THE
38 INTEREST EXPENSE OR INTANGIBLE EXPENSE IS DIRECTLY OR INDIRECTLY PAID,
39 ACCRUED, OR INCURRED TO, OR IN CONNECTION DIRECTLY OR INDIRECTLY WITH

1 ONE OR MORE DIRECT OR INDIRECT TRANSACTIONS WITH, ONE OR MORE RELATED
2 MEMBERS.

3 (C) THE ADDITION REQUIRED UNDER SUBSECTION (B) OF THIS SECTION DOES
4 NOT APPLY:

5 (1) FOR ANY TAXABLE YEAR IF THE CORPORATION'S MARYLAND
6 TAXABLE INCOME FOR THE TAXABLE YEAR IS COMPUTED USING THE COMBINED
7 REPORTING METHOD UNDER § 10-402.1 OF THIS TITLE AND THE CORPORATION AND
8 THE RELATED MEMBER ARE MEMBERS OF THE SAME UNITARY GROUP; OR

9 (2) TO ANY PORTION OF AN INTEREST EXPENSE OR INTANGIBLE
10 EXPENSE TO THE EXTENT THAT THE CORPORATION ESTABLISHES BY CLEAR AND
11 CONVINCING EVIDENCE, AS DETERMINED BY THE COMPTROLLER, THAT:

12 (I) THE TRANSACTION GIVING RISE TO THE PAYMENT OF THE
13 INTEREST EXPENSE OR THE INTANGIBLE EXPENSE BETWEEN THE CORPORATION
14 AND THE RELATED MEMBER DID NOT HAVE AS A PRINCIPAL PURPOSE THE
15 AVOIDANCE OF ANY PORTION OF THE TAX DUE UNDER THIS TITLE;

16 (II) THE INTEREST EXPENSE OR THE INTANGIBLE EXPENSE WAS
17 PAID PURSUANT TO ARM'S LENGTH CONTRACTS AT AN ARM'S LENGTH RATE OF
18 INTEREST OR PRICE; AND

19 (III) 1. DURING THE SAME TAXABLE YEAR, THE RELATED
20 MEMBER DIRECTLY OR INDIRECTLY PAID, ACCRUED, OR INCURRED THE INTEREST
21 EXPENSE OR THE INTANGIBLE EXPENSE TO A PERSON WHO IS NOT A RELATED
22 MEMBER; OR

23 2. A. THE RELATED MEMBER WAS SUBJECT TO A TAX ON
24 ITS NET INCOME OR RECEIPTS IN THIS STATE OR OTHER STATES OR POSSESSIONS OF
25 THE UNITED STATES OR IN FOREIGN NATIONS;

26 B. A MEASURE OF THE TAX IMPOSED BY THIS STATE AND
27 OTHER STATES OR POSSESSIONS OF THE UNITED STATES OR THE FOREIGN NATIONS
28 INCLUDED THE INTEREST EXPENSE OR THE INTANGIBLE EXPENSE RECEIVED BY
29 THE RELATED MEMBER FROM THE CORPORATION; AND

30 C. THE EFFECTIVE RATE OF TAX PAID BY THE RELATED
31 MEMBER TO THIS STATE AND OTHER STATES OR POSSESSIONS OF THE UNITED
32 STATES OR FOREIGN NATIONS IN THE AGGREGATE ON THE AMOUNTS RECEIVED BY
33 THE RELATED MEMBER FROM THE CORPORATION IS EQUAL TO OR GREATER THAN
34 4%.

35 (D) THIS SECTION MAY NOT BE CONSTRUED:

36 (1) TO REQUIRE A CORPORATION TO ADD TO ITS NET INCOME MORE
37 THAN ONCE ANY AMOUNT OF INTEREST EXPENSE OR INTANGIBLE EXPENSE THAT
38 THE CORPORATION PAYS, ACCRUES, OR INCURS TO A RELATED MEMBER; OR

1 (2) TO LIMIT OR NEGATE ANY OTHER AUTHORITY PROVIDED TO THE
2 COMPTROLLER UNDER THIS ARTICLE, INCLUDING:

3 (I) THE AUTHORITY TO MAKE ADJUSTMENTS UNDER § 10-109 OR §
4 10-402(D) OF THIS TITLE; OR

5 (II) THE AUTHORITY TO OTHERWISE ENTER INTO AGREEMENTS
6 AND COMPROMISES OTHERWISE ALLOWED BY LAW.

7 (E) THE COMPTROLLER SHALL ADOPT ANY REGULATIONS THAT ARE
8 NECESSARY OR APPROPRIATE TO CARRY OUT THIS SECTION.

9 10-402.1.

10 (A) IN THIS SECTION, "UNITARY GROUP" MEANS AN AFFILIATED GROUP OF
11 CORPORATIONS:

12 (1) THAT ARE ENGAGED IN A UNITARY BUSINESS; AND

13 (2) MORE THAN 50% OF THE VOTING STOCK OF EACH MEMBER OF
14 WHICH IS DIRECTLY OR INDIRECTLY OWNED BY:

15 (I) A COMMON OWNER OR OWNERS, EITHER CORPORATE OR
16 NONCORPORATE; OR

17 (II) ONE OR MORE MEMBER CORPORATIONS OF THE GROUP.

18 (B) FOR A TAXABLE YEAR BEGINNING AFTER DECEMBER 31, 2004, WHETHER
19 OR NOT THE UNITARY GROUP FILES A COMBINED INCOME TAX RETURN UNDER §
20 10-811 OF THIS TITLE, A MEMBER OF A UNITARY GROUP SHALL COMPUTE ITS
21 MARYLAND TAXABLE INCOME USING THE COMBINED REPORTING METHOD UNDER
22 THIS SECTION.

23 (C) UNDER THE COMBINED REPORTING METHOD, IF A CORPORATION IS A
24 MEMBER OF A UNITARY GROUP AND IS SUBJECT TO THE MARYLAND INCOME TAX,
25 THE PART OF THE CORPORATION'S MARYLAND MODIFIED INCOME THAT IS DERIVED
26 FROM OR REASONABLY ATTRIBUTABLE TO TRADE OR BUSINESS CARRIED ON IN THE
27 STATE SHALL BE DETERMINED AS FOLLOWS:

28 (1) DETERMINE THE MARYLAND MODIFIED INCOME OF THE UNITARY
29 GROUP, BY COMBINING THE CORPORATION'S INCOME WITH THE INCOME OF OTHER
30 MEMBERS OF THE UNITARY GROUP, DISREGARDING TRANSACTIONS BETWEEN
31 MEMBERS OF THE UNITARY GROUP TO ACCURATELY REFLECT THE INCOME OF THE
32 UNITARY GROUP;

33 (2) DETERMINE THE PART OF THE UNITARY GROUP'S MARYLAND
34 MODIFIED INCOME THAT IS DERIVED FROM OR REASONABLY ATTRIBUTABLE TO
35 TRADE OR BUSINESS CARRIED ON IN THE STATE USING A MARYLAND
36 APPORTIONMENT FRACTION OF THE UNITARY GROUP, BASED ON NUMERATORS AND
37 DENOMINATORS OF THE PROPERTY, PAYROLL, AND SALES FACTORS UNDER § 10-402

1 OF THIS SUBTITLE COMPUTED BY COMBINING THOSE AMOUNTS ASSOCIATED WITH
2 THE ACTIVITIES OF THE CORPORATION WITH THE ACTIVITIES OF OTHER MEMBERS
3 OF THE UNITARY GROUP, DISREGARDING TRANSACTIONS BETWEEN MEMBERS OF
4 THE UNITARY GROUP TO ACCURATELY REFLECT THE INCOME ALLOCABLE TO
5 MARYLAND; AND

6 (3) FOR EACH MEMBER OF THE UNITARY GROUP THAT IS SUBJECT TO
7 THE MARYLAND INCOME TAX, ALLOCATE A PORTION OF THE AMOUNT DETERMINED
8 UNDER ITEM (2) OF THIS SUBSECTION TO THAT CORPORATION BY MULTIPLYING THE
9 AMOUNT DETERMINED UNDER ITEM (2) OF THIS SUBSECTION BY A FRACTION:

10 (I) THE NUMERATOR OF WHICH IS THE MARYLAND
11 APPORTIONMENT FRACTION OF THAT CORPORATION, DETERMINED BY USING THAT
12 CORPORATION'S MARYLAND FACTORS IN THE NUMERATORS OF THE
13 APPORTIONMENT FORMULA AND USING THE COMBINED FACTORS OF ALL MEMBERS
14 OF THE UNITARY GROUP IN THE DENOMINATORS OF THE APPORTIONMENT
15 FORMULA; AND

16 (II) THE DENOMINATOR OF WHICH IS THE SUM OF THE MARYLAND
17 APPORTIONMENT FRACTIONS OF THE MEMBERS OF THE UNITARY GROUP THAT ARE
18 SUBJECT TO THE MARYLAND INCOME TAX.

19 (D) (1) SUBJECT TO REGULATIONS ADOPTED BY THE COMPTROLLER, A
20 CORPORATION THAT IS PART OF A UNITARY GROUP SHALL DETERMINE ITS INCOME
21 DERIVED FROM OR ATTRIBUTABLE TO TRADE OR BUSINESS IN THE STATE USING A
22 WATER'S EDGE METHOD AS DESCRIBED IN THIS SUBSECTION.

23 (2) UNDER THE WATER'S EDGE METHOD, THE UNITARY GROUP FOR
24 PURPOSES OF THE COMBINED REPORTING METHOD REQUIRED UNDER THIS
25 SECTION SHALL INCLUDE THE FOLLOWING AFFILIATED ENTITIES ONLY:

26 (I) CORPORATIONS THAT ARE INCORPORATED IN THE UNITED
27 STATES, EXCLUDING CORPORATIONS MAKING AN ELECTION PURSUANT TO §§ 931 TO
28 936 OF THE INTERNAL REVENUE CODE;

29 (II) DOMESTIC INTERNATIONAL SALES CORPORATIONS, AS
30 DESCRIBED IN §§ 991 TO 994 OF THE INTERNAL REVENUE CODE AND FOREIGN SALES
31 CORPORATIONS AS DESCRIBED IN §§ 921 TO 927 OF THE INTERNAL REVENUE CODE;

32 (III) ANY CORPORATION, OTHER THAN A BANK, REGARDLESS OF
33 THE PLACE WHERE IT IS INCORPORATED IF THE AVERAGE OF ITS PROPERTY,
34 PAYROLL, AND SALES FACTORS WITHIN THE UNITED STATES IS 20% OR MORE;

35 (IV) EXPORT TRADE CORPORATIONS, AS DESCRIBED IN §§ 970 TO 972
36 OF THE INTERNAL REVENUE CODE; AND

37 (V) UNDER THE CIRCUMSTANCES AND TO THE EXTENT PROVIDED
38 BY REGULATIONS THAT THE COMPTROLLER ADOPTS:

1 1. A CORPORATION NOT DESCRIBED IN ITEMS (I) THROUGH
2 (IV) OF THIS PARAGRAPH, TO THE EXTENT OF ITS INCOME DERIVED FROM OR
3 ATTRIBUTABLE TO SOURCES WITHIN THE UNITED STATES AND ITS FACTORS
4 ASSIGNABLE TO A LOCATION WITHIN THE UNITED STATES, AS DETERMINED BY
5 REGULATIONS THAT THE COMPTROLLER ADOPTS; OR

6 2. AN AFFILIATED CORPORATION THAT IS A CONTROLLED
7 FOREIGN CORPORATION, AS DEFINED IN § 957 OF THE INTERNAL REVENUE CODE.

8 (3) THE USE OF THE WATER'S EDGE METHOD IS SUBJECT TO THE TERMS
9 AND CONDITIONS THAT THE COMPTROLLER REQUIRES BY REGULATION, INCLUDING
10 ANY CONDITIONS THAT ARE NECESSARY OR APPROPRIATE TO PREVENT THE
11 AVOIDANCE OF TAX OR TO CLEARLY REFLECT INCOME FOR ANY PERIOD.

12 (E) THE COMPTROLLER SHALL ADOPT REGULATIONS THAT ARE NECESSARY
13 OR APPROPRIATE TO CARRY OUT THIS SECTION.

14 10-804.

15 (e) Each person required under this subtitle to file an income tax return or
16 estimated income tax declaration or return shall:

17 (3) attach to an income tax return or otherwise file with the Comptroller
18 any records or statements that the Comptroller requires, including:

19 (i) for an individual who has income tax withheld from salary,
20 wages, or other compensation for personal services, or other payments, a copy of the
21 statement from the person who withholds the tax that states:

22 1. the amount of salary, wages, or other compensation for
23 personal services paid and the income tax withheld; or

24 2. the amount of payments made and the income tax
25 withheld; [and]

26 (ii) a copy of the federal income tax return:

27 1. for a corporation; and

28 2. if the Comptroller requests, for an individual; AND

29 (III) IF THE COMPTROLLER REQUESTS, FOR A CORPORATION THAT
30 IS A MEMBER OF AN AFFILIATED GROUP OR A CONTROLLED GROUP UNDER § 1504 OR
31 § 1563 OF THE INTERNAL REVENUE CODE, A STATEMENT OF ALL INTER-MEMBER
32 COSTS OR EXPENSES AND ALL INTER-MEMBER SALES, EXCHANGES, OR OTHER
33 TRANSACTIONS INVOLVING TANGIBLE OR INTANGIBLE PROPERTY FOR THE TAXABLE
34 YEAR.

1 10-811.

2 (A) [Each] EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, EACH
3 member of an affiliated group of corporations shall file a separate income tax return.

4 (B) (1) FOR A TAXABLE YEAR BEGINNING AFTER DECEMBER 31, 2004,
5 EXCEPT AS PROVIDED BY AND SUBJECT TO REGULATIONS ADOPTED BY THE
6 COMPTROLLER, AN AFFILIATED GROUP OF CORPORATIONS ENGAGED IN A UNITARY
7 BUSINESS SHALL FILE A COMBINED INCOME TAX RETURN REFLECTING THE
8 AGGREGATE INCOME TAX LIABILITY OF ALL OF THE MEMBERS OF THE AFFILIATED
9 GROUP THAT ARE ENGAGED IN A UNITARY BUSINESS.

10 (2) THE COMPTROLLER SHALL ADOPT REGULATIONS THAT ARE
11 NECESSARY OR APPROPRIATE TO CARRY OUT THIS SUBSECTION.

12 SECTION 2. AND BE IT FURTHER ENACTED, That, except as otherwise
13 provided in this section, this Act shall take effect June 1, 2003 and shall be applicable
14 to all taxable years beginning after December 31, 2002. The Comptroller's authority
15 under § 10-109 of the Tax - General Article, as enacted in Section 1 of this Act, to
16 distribute, apportion, or allocate gross income, deductions, credits, or allowances
17 between and among two or more organizations, trades, or businesses to clearly reflect
18 income shall apply to any taxable year for which an assessment is not barred by the
19 statute of limitations.